

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- the return of their security deposit.

Only the Landlord's agent appeared.

Service

I find the Tenant was served with the Landlord's application for dispute resolution and Notice of Hearing on December 6, 2024, by courier.

Preliminary Issue

The Tenant has applied for the return of the security deposit; however, the Landlord had claimed against the security deposit within 15 days of the tenancy ending. There was no requirement for the Tenant to file this application as the security deposit will automatically be considered through the Landlord's application.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for money owed or compensation under the Act?

Is the Landlord entitled to keep retain all or a portion of the Tenant's security deposit?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on August 1, 2024, and was a one year fixed term expiring on September 31, 2025. Rent of \$1,400.00, due on the first day of the month, with a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$700.00. The tenancy ended on November 27, 2024.

The Landlord's agent stated that they had returned the full pet damage of \$700.00 and \$23.60 of security deposit to the Tenant. The agent stated they kept \$176.40 from the security deposit as agreed by the Tenant in the move-out inspection. The Landlord stated they are currently holding the amount of \$500.00 as that amount they are claiming against as a liquidated damages.

The Landlord's agent testified that the Tenant gave notice to end the tenancy on October 31, 2024, to end the tenancy on November 30, 2024, which was a breach of the fixed term agreement. The agent stated that clause 33 of the addendum to the tenancy agreement allows the Landlord to collect liquidate damages in the amount of \$500.00 which was for the genuine cost of renting the premise.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, Landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the evidence of the Landlord's agent that the Tenant breached the fixed term agreement as the Tenant was not entitled to end the tenancy earlier than the date

specified in the tenancy agreement which was September 31, 2025. I find the Tenant breached section 45(2) of the Act.

The tenancy agreement addendum clause 33, allows the Landlord to collect liquidated damages this was a genuine estimate to re-rent the rental unit. As the Tenant did breach the Act, the Landlord is entitled to recover liquidated damages. I find the Tenant owes the Landlord \$500.00.

...
I find that the Landlord has established a total monetary claim of **\$600.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the Landlord retain the remainder of the security deposit of **\$500.00.** and I grant the Landlord an order under section 67 of the Act for the balance due of **\$100.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The Landlord is granted a monetary order and may keep the remainder of the security deposit in partial satisfaction of the claim and the Landlord is granted a formal order for the balance due.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 18, 2025

Residential Tenancy Branch